

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-187100

DATE: September 20, 1976

MATTER OF: Miltope Corporation

61515
98008

DIGEST:

1. That portion of protest alleging solicitation specification defect is untimely under GAO Bid Protest Procedures and not for consideration since it was not filed until after closing date for receipt of proposals.
2. Protests concerning affirmative determinations of responsibility are no longer reviewed by GAO except for reasons not applicable in this case.

Miltope Corporation (Miltope) protests the award of a contract to Qualtrol Electronics under request for proposals (RFP) N00104-76-R-2365, issued by the Navy Ships Parts Control Center, Mechanicsburg, Pennsylvania. Miltope contends that the RFP specification was inconsistent in requesting "Potter Instrument Company Type M18501-75 or equivalent" read/write head assembly with the requirement that the item be capable of lasting 4,000 tape passing hours when that particular piece of equipment, the rights to which were acquired by Miltope, will last at least 8,000 hours. Miltope also questions Qualtrol's qualifications to perform the contract on the ground that the firm is a subassembly house not employing the necessary technical personnel and not in possession of any drawings, test equipment, or a calibration system for the item to be furnished.

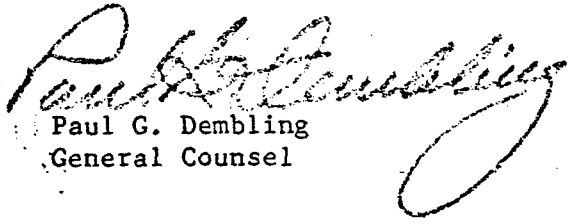
With regard to the first issue, Miltope asserts that it could have supplied a lower cost head assembly than the one called for by the RFP if the Navy only required 4,000 passing hours. However, it quoted prices only for the more expensive head assembly and merely stated in its proposal that it would "be pleased to provide an alternate quote" if the Navy wanted "a lower cost assembly only capable of 4,000 tape passing hours." Apparently Qualtrol also offered the more costly head assembly. Thus, it appears that Miltope and Qualtrol were competing on the same basis and that the protest is directed not against any unfair award resulting from inconsistent specifications, but against the inconsistent specifications themselves.

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When viewed in this light, the protest on this issue is untimely. Under our Bid Protest Procedures, protests based upon alleged improprieties contained in a solicitation which are apparent upon the face of the RFP must be filed (received at GAO) prior to the closing date for receipt of proposals. 4 C.F.R. § 20.2(b)(1) (1976). The RFP indicates that March 31, 1976 was the closing date set for receipt of proposals. The protest was filed on August 3, 1976. Therefore, this portion of Miltope's protest is untimely and will not be considered on the merits.

The remainder of Miltope's protest is in essence challenging the procuring activity's affirmative determination of Qualtrol's responsibility. This Office no longer reviews protests concerning affirmative determinations of responsibility, absent a showing of fraud on the part of contracting officials or other circumstances not stated here. Central Metal Products, Inc., 54 Comp. Gen. 66 (1974), 74-2 CPD 64. While we do consider protests involving negative determinations of a protester's responsibility in order to provide assurance against an arbitrary rejection of an offer, affirmative determinations are based in large measure on subjective judgments which are largely within the discretion of the procuring officials who must suffer any difficulties resulting from the contractor's inability to perform.

Accordingly, the protest is dismissed.


Paul G. Dembling
General Counsel